

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

VUTEK, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:07CV1886 CDP
	)	
LEGGETT & PLATT,	)	
INCORPORATED and L&P	)	
PROPERTY MANAGEMENT	)	
COMPANY,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

Defendants Leggett & Platt, Inc. and L&P Property Management Co. (“L&P”) have requested a stay in this action pending the outcome of the appeal in Case No. 4:05CV788 CDP. That case involved the same parties and some of the same legal questions. In support of their motion, defendants argue that waiting for the Federal Circuit’s decision in that case will simplify issues in this case. While I agree that the appeal has the potential to resolve several issues in this case, I will not stay this case pending the outcome of the appeal. This case involves several issues that are independent of the legal questions in the earlier case, and I believe plaintiff VUTEk’s interests in proceeding with the case without undue delay outweigh any potential loss of efficiency. Still, I am open to suggestions about

how this case might proceed so as to avoid undue costs, and I expect the parties to discuss ideas for this when they plan the schedule for the case

### Discussion

L&P previously filed a patent infringement case against VUTEk, alleging that VUTEk's printers infringed on U.S. Patent No. 6,755,518 ('518 patent), and I eventually held the '518 patent to be invalid. L&P is currently appealing that decision to the Federal Circuit. The appeal is in the process of briefing, and no hearing date has yet been set. Meanwhile, L&P received U.S. Patent No. 7,290,874 ('874 patent), a continuation of the '518 patent. The '874 patent and '518 patent contain many of the same terms and refer to similar technology. In this suit VUTEk seeks a declaratory judgment of non-infringement and invalidity of the '874 patent.

The decision whether to stay an action pending appeal is within the trial court's discretion. Landis v. North American Co., 299 U.S. 248, 254 (1936). I should weigh the competing interests to determine whether a stay is warranted. Id. 254-55. Factors that have been considered by other courts in determining whether to stay a patent case pending appeal include: (1) whether a stay will simplify issues and promote judicial economy; (2) the balance of harm to the parties; (3) the length of the requested stay; (4) whether discovery is complete and

a trial date has been set; (5) the interests of persons not parties to the litigation; and (6) the public interest. See Wing Shing Products (BVI) Ltd. v. Simatelex Mfg. Co., 2005 WL 912184, at \*1 (S.D.N.Y. April 19, 2005); see also Smithkline Beecham Corp. v. Apotex Corp., 2004 WL 1615307, at \*7 (E.D. Pa. July 16, 2004); Alloc, Inc. v. Unilin Decor N.V., 2003 WL 21640372 (D. Del. July 11, 2003).


After careful consideration of all of these factors, I will deny a stay in this case. While L&P is correct that the appeal does have the potential to simplify some of the issues in this case, I find that the other factors outweigh this benefit. Several of VUTEk's arguments with regard to invalidity have nothing to do with the issues currently before the Federal Circuit. Further, the appeal is still in a relatively early stage, and I have no way of knowing when a decision will be reached by the Federal Circuit. Finally, VUTEk has raised legitimate arguments about how delaying this case might adversely affect its interests.

Accordingly,

**IT IS HEREBY ORDERED** that defendants' motion to stay [#53] is denied.

**IT IS FURTHER ORDERED** that plaintiff's motion to for leave to file a surreply [#56] is granted.

**IT IS FURTHER ORDERED** that defendants' motion for an extension of time to file their answer [#57] is granted.

A handwritten signature in cursive script, reading "Catherine D. Perry", written in black ink.

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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 6th day of March, 2008.